



CITY COUNCIL AGENDA REPORT

MEETING DATE: NOVEMBER 15, 2011

ITEM NUMBER:

SUBJECT: TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

DATE: NOVEMBER 3, 2011

FROM: DEVELOPMENT SERVICES DEPARTMENT

PRESENTATION BY: CLAIRE FLYNN, AICP, ACT. ASST. DEVELOPMENT SVCS. DIRECTOR

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RECOMMENDATION

Pursuant to the Planning Commission's direction, authorize more than 4 hours of staff time to address telecommunication facilities in the public right-of-way, including discretionary review by the Planning Commission, as applicable.

BACKGROUND

Telecom Facilities in the Public Right-of-Way

Although the Planning Commission's purview is primarily focused on Title 13 (Zoning Code) and Title 20 (Property Maintenance), Commission may raise issues which will then be addressed by the appropriate City staff, as applicable. In this case, the telecommunications regulatory ordinance can be found in Title 19, Chapter I, Article 7 of the Costa Mesa Municipal Code.

Utility applications for work in the public right of way are submitted and processed by the Public Services Department as stipulated by the City's municipal code. This section is also ruled by the Federal Communications Commission (FCC) rules and regulations. If applicable, these permit applications are routed to other departments for review and conditioning. Public Services staff compile the comments from other departments and add additional conditions/requirements to the permit. Other than the fees allowed to be charged to offset the encroachment permit and inspection costs, no additional revenue is derived from these types of facilities in the public right-of-way.

T-Mobile Antenna in the Eastside

Concerns have been raised regarding the T-Mobile telecommunications antenna at 396 E. 20th Street. The equipment vault is located underground and the pole structure is 18" in diameter and 108" high. The concerns related to aesthetics, height, public noticing, and the overall approval process for permitting these types of facilities in the public right-of-way.

At this time, pursuant to the regulations set forth in Title 19 as well as relevant State/Federal statutes, the review/approval of telecommunications facilities is a ministerial review similar to a building permit. There is little to no discretion applied when approving these facilities provided that they comply with building, engineering, and reasonable aesthetic requirements. They are generally considered in a similar manner as other utilities, including Southern California Edison utility cabinets. Additionally, the Code does not specify public notice procedures for these types of applications. Until the Code is amended or new procedures adopted, telecom facilities in the public right-of-way are processed as "over-the-counter" type of permits without a public hearing or public noticing.

New Development Standards and Review Process

Subsequent to the approval and installation of the T-Mobile antenna, the Planning Commission considered changes to the existing approval process for telecom facilities in the public right-of-way. The proposed work effort would accomplish the following objectives:

- Create opportunity for public noticing to solicit public input on a proposed telecom facility in the public right-of-way.
- Require discretionary review, as applicable, to the fullest extent as allowed pursuant to State and Federal laws for telecom facilities in the public right-of-way.
- If a discretionary review process is in place, establish the Planning Commission as the final review authority with its decisions appealable to the City Council.
- Consider options to implement the new regulations, including but not limited to, (a) establishing a new Council policy, (b) Amendment to Title 19 of the Costa Mesa Municipal Code, etc.

ALTERNATIVES CONSIDERED

City Council has the following alternatives available for consideration:

1. Direct staff to development program that addresses telecommunication facilities in the public right-of-way.
2. Receive and File. No further activity will occur on this proposal unless directed by the City Council at a future date.

FISCAL REVIEW

Fiscal review is not required.

LEGAL REVIEW

Legal review is not required.

CONCLUSION

The Public Services Director will be available to respond to specific questions regarding the permitting process for the T-Mobile antenna at the meeting. City Council may provide direction to staff to specify regulations and a public review process for these telecommunications facilities in the future. The new regulations, design guidelines, and requirements may be adopted by City Council resolution or codified in the Municipal Code by ordinance.



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